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Irico Group Corp. and Irico
Display Devices Co., Ltd.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Master File No.: 07-cv-05944 JST

MDL No. 1917

This document relates to:

ALL DIRECT PURCHASER ACTIONS

ALL INDIRECT PURCHASER ACTIONS

**DEFENDANTS IRICO GROUP CORP.
AND IRICO DISPLAY DEVICES CO.,
LTD.'S NOTICE OF MOTION AND
EMERGENCY MOTION FOR RELIEF
FROM SCHEDULING ORDER (CIV. L.R.
16-2(d))**

Date: August 11, 2022
Time: 2:00 p.m.
Judge: Hon. Jon S. Tiga
Courtroom: 6, 2nd Floor

NOTICE OF MOTION AND EMERGENCY MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 11, 2022, at 2:00 p.m.,¹ or at such other date as is convenient for the Court, before the Honorable Jon S. Tigar, United States District Judge of the Northern District of California, Oakland Courthouse, located at Courtroom 6, 2nd Floor, 1301 Clay Street, Oakland, California, Defendants Irico Group Corp. and Irico Display Devices Co., Ltd., by and through their undersigned counsel, will and hereby do move, pursuant to Rule 16 of the Federal Rules of Civil Procedure and Civil Local Rule 16-2(d), for an Order modifying the current Order re Case Schedule, ECF No. 6016, regarding the June 30, 2022 deadline for the depositions of Wang Zhaojie, Su Xiaohua, and Yan Yunlong, and related pre-trial motion dates in the current IPP schedule.

This Motion is based on the Notice of Motion, the following Memorandum of Points and Authorities in support thereof, the accompanying Declaration of Evan Werbel, the accompanying Declaration of Zhang Wenkai, any materials found in the record, along with the argument of counsel and such other matters as the Court may consider.

ISSUES TO BE DECIDED

1. Whether good cause exists to modify the current deadline for depositions of Irico witnesses Wang Zhaojie and Yan Yunlong and related pre-trial motion dates in the current IPP schedule?

¹ Irico acknowledges that this hearing date is after the date currently scheduled for the depositions at issue; however, based on new information from the witnesses and continuing negotiations with the Plaintiffs, Irico is filing this Motion at the first available opportunity.

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Rule 16 of the Federal Rules of Civil Procedure and Civil Local Rule 16-2(d), Defendants Irico Group Corp. and Irico Display Devices Co., Ltd. (“Irico” or “Irico Defendants”) respectfully move the Court for relief from the operative Order re Case Schedule, ECF No. 6016, requiring Irico employees Wang Zhaojie, Su Xiaohua², and Yan Yunlong to appear for deposition prior to June 30, 2022.³ A proposed order modifying the current case management schedule is filed herewith. The Direct Purchaser Plaintiffs (“DPPs”) and Indirect Purchaser Plaintiffs (“IPPs,” together “Plaintiffs”) have indicated to counsel for Irico that they do not concur with this motion.

PRELIMINARY STATEMENT

Irico seeks relief from the current case management schedule because the witnesses at issue, who had previously agreed to be deposed remotely outside of China, currently will not agree to travel to Macau to sit for remote depositions in midst of global pandemic given the severe quarantine restrictions that they will face upon their return to mainland China. Under current conditions, these depositions would absorb at least twenty-five (25) days of the witnesses' time given travel and quarantine requirements. The witnesses have indicated, however, that they are prepared to travel to Macau for depositions once the quarantine conditions are lifted, and Irico is working with the witnesses to facilitate their participation under more reasonable Covid restrictions. For this reason, Irico now requests a modification to the Court's scheduling order that would allow for the depositions to occur at a later date, but without impacting the new IPP trial date recently set by the Court.

Irico has worked diligently over the last ten months with Plaintiffs and the witnesses to allow Plaintiffs to take these depositions. Such scheduling has been repeatedly stymied by the

² As detailed below, Mr. Su recently resigned from Irico and has indicated that he is not willing to travel to Macau for a deposition.

³ Irico is also respectfully requesting that the Court modify certain dates in the IPP schedule related to dispositive motions and motions in limine, given the need to develop the factual record fully before filing such motions and the fact that moving these dates will not impact the new trial date recently set by Court. See Amended Scheduling Order, ECF No. 6024. While drafting the proposed schedule, Irico has made best efforts to follow the Court's prior scheduling orders with respect to the intervals between these events.

1 unique circumstances of the Covid pandemic in China, through no fault of Irico or the Plaintiffs.
 2 Due to the illegality of conducting in person or remote depositions in China under Chinese law,⁴
 3 Irico's witnesses must travel outside of mainland China in order to give a deposition, but such
 4 travel is subject to the severe restrictions put in place by Chinese national and local authorities. At
 5 all times, Irico has sought to find a solution and has not refused, at any time, to produce the
 6 requested witnesses for deposition. Irico believed that the depositions would be going forward
 7 earlier this month until they learned that the witnesses, when push came to shove, refused to accept
 8 the current excessive quarantine time requirements.

9 The history of the scheduling process confirms Irico's good faith effort to produce the
 10 requested witnesses for depositions. As explained in greater detail below, Plaintiffs initially
 11 insisted on in-person depositions but ultimately agreed to remote depositions given the Covid
 12 crisis. Because China does not allow depositions to occur on Chinese soil, Irico first tried to
 13 arrange for its witnesses to travel to Hong Kong to conduct the remote depositions, but that effort
 14 failed when Hong Kong effectively shut down due to a significant surge in omicron cases. Dan
 15 Strumpf, Hong Kong Hospital Wards Overflow as Omicron Defies Zero-Covid Policies, The Wall
 16 Street Journal (Feb. 15, 2022), <https://www.wsj.com/articles/hong-kong-hospital-wards-overflow-as-omicron-defies-zero-covid-policies-11644937247>. Irico diligently pursued other alternatives
 17 and targeted Macau as an alternate location. After applying for visas for its witnesses to travel to
 18 Macau in the midst of the pandemic, one of its potential witnesses, Su Xiaohua, resigned from the
 19 company rather than endure the required quarantine. *See* Declaration of Zhang Wenkai in Support
 20 of Defendants Irico Group Corp. and Irico Display Devices Co., Ltd.'s Emergency Motion for
 21 Relief from Scheduling Order ("Zhang Decl.") ¶¶ 5-6. After Irico secured the Macau travel visas
 22 and shortly before the depositions were to occur, the two remaining witnesses, Wang Zhaojie and
 23 Yan Yunlong, informed the company for the first time that they refused to travel to Macau at this
 24 time, citing the extreme burden of a minimum four weeks of post-travel quarantine mostly in a
 25 state-owned hotel in China that would isolate the witnesses from their families, increase their own
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 28 ⁴ *See supra* p. 7.

1 risk of contracting Covid while traveling and quarantining, and result in extreme personal
 2 hardship. Zhang Decl. ¶¶ 8-9. Again, both witnesses have agreed to travel to Macau once the
 3 quarantine obligation are lifted, and Irico is working with the witnesses to facilitate their
 4 participation under more reasonable quarantine conditions.⁵

5 It cannot be denied that authorities in China and the United States have responded quite
 6 differently to Covid. Even a cursory scan of news articles discussing the response to even a
 7 minima increase in case rates in major cities in China such as Hong Kong and Shanghai over the
 8 past six months highlights the seriousness with which Chinese authorities act in response to Covid
 9 cases. Jessie Yeung and Akanksha Sharma, Hong Kong and Shanghai lose their international luster
 10 as Covid restrictions bite, CNN.com (April 22, 2022),
 11 [https://www.cnn.com/2022/04/22/china/china-hubs-shanghai-hong-kong-covid-intl-hnk-
 12 mic/index.html](https://www.cnn.com/2022/04/22/china/china-hubs-shanghai-hong-kong-covid-intl-hnk-mic/index.html). Irico itself has been impacted by shutdowns in the greater Xi'an region, including
 13 at its headquarters in Xianyang City. *See* Order re Discovery Schedule at 1, ECF No. 5980 (citing
 14 the implementation of a ““stay-at-home’ order affecting all citizens” in the Qindu District of
 15 Xianyang City). China continues to promote a “Zero Covid” policy, which can seem a world away
 16 from attitudes in the United States, where there appears to be a growing consensus to adopt a
 17 strategy of living with Covid. From a myopic American perspective, it would be easy to dismiss
 18 Irico’s request for an extension of the deposition deadline as pretext for continued delay or
 19 frustration of the discovery process, as Plaintiffs have expressed and are likely to repeat in
 20 opposition. However, Irico respectfully asks the Court to consider that these witnesses do not live
 21 in the United States, where Covid-related mandates have largely gone by the wayside, and instead
 22 understand the reality that Covid, including the quarantine requirement, remains an extremely
 23 serious concern in China and the impact to these witnesses would be severe even under the best of
 24 circumstances. A modification of the current schedule is reasonable to accommodate the

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 27 ⁵ The decision earlier this week by the Shaanxi authorities to reduce the quarantine to a minimum of
 28 three weeks, while an encouraging sign for the future prospects of conducting the depositions, did
 not alter the witnesses’ decision to refuse to travel. *See* Zhang Decl. ¶ 4.

1 witnesses' concerns and to allow for the lifting of travel restrictions and quarantine policies in
 2 China.

3 More importantly, given the current schedules in the DPP case, where no further deadlines
 4 are set other than the close of fact discovery, and the July 2023 trial date in the IPP case, it is
 5 possible to extend the deadline for these depositions by a period of six months while maintaining
 6 an orderly pre-trial schedule and avoiding prejudice to Plaintiffs. The trial and pre-trial
 7 proceedings could still progress on a schedule that largely follows the timing intervals between key
 8 events that existed just prior to the Court's rescheduling of the IPP trial date.

9 For the forgoing reasons, Irico believes that good cause exists to grant Irico's motion and
 10 respectfully requests that the Court do so.

11 **STATEMENT OF FACTS**

12 On August 26, 2021, Plaintiffs sent a letter to Irico regarding their intention to depose a
 13 number of purported Irico witnesses, including Wang Zhaojie and Su Xiaohua. Declaration of
 14 Evan J. Werbel in Support of Defendants Irico Group Corp. and Irico Display Devices Co., Ltd.'s
 15 Emergency Motion for Relief from Scheduling Order ("Werbel Decl."), Ex. 1 at 1. Over the next
 16 several months, the parties met and conferred on numerous occasions regarding the scheduling of
 17 the depositions given changing conditions related to the COVID-19 pandemic and associated
 18 travel restrictions. *See* Order re Discovery Schedule at 1, ECF No. 5980. During this time,
 19 Plaintiffs insisted on in-person depositions in the California (even though travelers from China
 20 were not allowed to directly enter the United States) or another location for in-person depositions
 21 somewhere in the world where the Parties could travel with minimal restrictions. *See* Werbel Decl.
 22 ¶ 3. On October 12, 2021, Plaintiffs noticed the depositions of nine purported Irico witnesses, a
 23 number of which were former employees. *Id.* At this stage of discussions, Plaintiffs requested that
 24 the depositions take place in-person in San Francisco as the limitations on travel from China might
 25 soon ease. *See* Werbel Decl., Ex. 2 at 1. Irico noted the impracticality of the witnesses traveling to
 26 the United States given the dramatic disparity in Covid case rates in the United States versus
 27 China, and instead offered for Mr. Wang and Mr. Su to appear via remote deposition in Hong
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1 Kong. *Id.* at 1-2. Plaintiffs threatened to raise the issue of in-person depositions with Special
 2 Master Walker at that time but also agreed to consider remote depositions in Hong Kong. *See*
 3 Werbel Decl., Ex. 3 at 1. Shortly thereafter, Irico reaffirmed its commitment to remote depositions
 4 in Hong Kong, but also agreed to presenting the issue of in-person depositions to Special Master
 5 Walker. *See* Werbel Decl., Ex. 4 at 1. Plaintiffs did not raise any issue with Special Master Walker,
 6 and the Parties worked towards remote depositions in Hong Kong. In December 2021, as the
 7 parties continued to discuss scheduling of remote depositions in Hong Kong, the omicron variant
 8 of SARS-COVID-2 was identified in Hong Kong. *See* Werbel Decl., Ex. 5 at 1.

9 The parties continued to confer in good faith regarding the depositions, and on January 10,
 10 2022, the Court approved a Stipulation and Order that included a proposed deadline of March 18,
 11 2022 to complete the depositions of Mr. Wang and Mr. Su. *See* Order re Discovery Schedule at 3,
 12 ECF No. 5980. In February 2022, the number of Covid cases in Hong Kong skyrocketed and Irico
 13 was unable to obtain the necessary visas for Mr. Wang or Mr. Su to travel to Hong Kong as a
 14 result. *See* Werbel Decl., Ex. 6 at 1. Also in February, Plaintiffs informed Irico of their intention to
 15 depose Yan Yunlong. *See* Werbel Decl., Ex. 7 at 1. By mid-March, it was clear that the Covid
 16 situation in Hong Kong would not permit the depositions to proceed in a timely manner, and Irico
 17 informed Plaintiffs of its intention to pursue Macau as an alternative location. *See* Werbel Decl.,
 18 Ex. 8 at 1. On March 18, 2022, in light of the evolving Covid situation in Hong Kong, the Court
 19 granted the parties' Stipulation and Order extending the deposition deadline to May 31, 2022,
 20 which also added Yan Yunlong to the list of deponents. *See* Order re Discovery Schedule at 2,
 21 ECF No. 5999. Irico applied for the necessary visas to travel to Macau, but the visas could not be
 22 obtained in time for the depositions to proceed in May. *See* Order re Discovery Schedule at 1, ECF
 23 No. 6016. On May 25, 2022, the Court agreed to extend the deposition deadline to June 30, 2022.
 24 *Id.* at 2.

25 On May 25, 2022, Su Xiaohua submitted his formal resignation to Irico. Zhang Decl. ¶ 6.
 26 Irico's in-house counsel contacted Mr. Su and learned that Mr. Su resigned because he refused to
 27 travel to Macau for a deposition. *Id.* Mr. Su informed Irico that he refused to travel because of the
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1 quarantine requirements in Shaanxi Province for travelers returning from Macau, which then
 2 mandated a minimum of twenty-one days in a government-run facility and an additional seven
 3 days of home confinement (“21+7 Day Policy”). *Id.*; *see also id.* ¶ 4. Irico informed Plaintiffs of
 4 Mr. Su’s resignation on June 7, 2022. *See* Werbel Decl., Ex. 9 at 1. Irico then received
 5 confirmation of the approval of visa applications for the three witnesses to travel to Macau. Zhang
 6 Decl. ¶ 7. After Irico obtained the visas, Wang Zhaojie and Yan Yunlong separately informed Irico
 7 that they refused to travel to Macau at this time, citing the 21+7 Day Policy and the resulting
 8 impact on their families and work obligations. *Id.* ¶¶ 8-9. Both Mr. Wang and Mr. Yan stated that
 9 they were willing to travel to Macau at a later date, once the quarantine obligations had been lifted.
 10 *Id.*

11 Irico attempted to persuade Mr. Wang and Mr. Yan to cooperate with the depositions and
 12 agree to travel to Macau immediately, assuring them that others would cover their work
 13 obligations during the quarantine period, offering to compensate them at double their normal pay
 14 rate, and offering a financial bonus incentive because of the over one-month continuous period that
 15 the witness will be required to be separated from their families. *Id.* ¶ 10. Mr. Wang and Mr. Yan
 16 still refused to travel for the depositions at this time. *Id.*

17 On June 14, 2022, Irico informed Plaintiffs that Mr. Wang and Mr. Yan had declined to
 18 travel to Macau at the present time. *See* Werbel Decl., Ex. 10 at 1. Irico affirmed its commitment
 19 to producing Mr. Wang and Mr. Yan, and at no time did Irico refuse to produce the witnesses.
 20 Irico proposed that the parties agree to a six-month extension of the deposition deadline to allow
 21 for anticipated changes to the quarantine policies.⁶ *Id.* On June 17, 2022, Plaintiffs responded and
 22 demanded that Mr. Wang and Mr. Yan appear by mid-July. *See* Werbel Decl., Ex. 11 at 1. On June
 23 22, 2022, Irico replied to Plaintiffs’ June 17 letter and reiterated the need for a six-month
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25 ⁶ Just this week, the quarantine recommendations issued by the Chinese government were adjusted
 26 which led to a change in the quarantine policy in Shaanxi Providence. *See* Zhang Decl. ¶ 4. The new
 27 quarantine policy has been reduced from a 21 + 7 Day Policy to a 14 + 7 Day Policy, now requiring
 28 14 days in a Chinese facility and another 7 days of home quarantine. *Id.* Mr. Wang and Mr. Yan
 have informed Irico counsel that this reduction does not alter their concerns over the quarantine
 period or their refusal to travel to Macau at this time. *See id.* ¶¶ 8-9.

1 extension, noting the legitimate concerns of the witnesses and the lack of prejudice given the
 2 recent developments regarding the IPP trial date. *See* Werbel Decl., Ex. 12 at 1.

3 On June 29, 2022, the parties met and conferred regarding the parties' various proposals,
 4 including Irico's proposed six-month extension, but were unable to reach a resolution. *See* Werbel
 5 Decl. ¶ 15.

6 **LEGAL STANDARD**

7 A scheduling order may be modified for "good cause." Fed. R. Civ. P. 16(b)(4). "Pretrial
 8 scheduling orders may be modified if the dates scheduled 'cannot reasonably be met despite the
 9 diligence of the party seeking the extension.'" *In re Cathode Ray Tube (CRT) Antitrust Litig.*, Case
 10 No. C-07-5944-SC, 2014 WL 4954634, at *2 (N.D. Cal. Oct. 1, 2014) (*quoting Johnson v.*
 11 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)).

12 **ARGUMENT**

13 Courts have repeatedly recognized the legitimate concerns of witnesses regarding the
 14 COVID-19 pandemic and allowed for accommodations or necessary extensions. *See Aileron Inv.*
 15 *Mgmt., LLC v. Am. Lending Ctr., LLC*, No. 8:21-CV-146-MSS-AAS, 2022 WL 93573, at *2 (M.D.
 16 Fla. Jan. 10, 2022 (granting protective order for remote deposition to accommodate witnesses'
 17 concerns about travel due to "[t]he onset of the Omicron COVID-19 variant"); *United States v.*
 18 *Berglund*, No. 20-cr-00200 (SRN/TNL), 2021 WL 1589548, at *2 (D. Minn. Apr. 23, 2021)
 19 (continuing start of trial due to numerous witnesses' travel-related COVID-19 risks).

20 The additional complicating factor presented here is China's prohibition on foreign
 21 depositions (in-person or remote) taken in mainland China. *See, e.g.*, China Judicial Assistance
 22 Information ("China does **not** permit attorneys to take depositions in China for use in foreign
 23 courts" (emphasis in original)), <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html>; *see also* Order Regarding Consent Addendums to the Fact
 24 Witness Deposition Protocol at 3, *In re: Valstartan N-Nitrosodimethylamine (NDMA), Lostartan,*
 25 *and Irbesartan Products Liability Litigation*, Civil No. 19-2875 (D.N.J. Dec. 30, 2020), ECF No.
 26 701; *Junjiang Ji v. Jling, Inc.*, No. 15-CV-4194(SIL), 2019 WL 1441130, at *2, 4, and 6 (E.D.N.Y.
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1 Mar. 31, 2019). Were it not for this prohibition, Irico's witnesses could and would sit for remote
 2 depositions in their own homes or offices, which would address the concerns of Mr. Wang and Mr.
 3 Yan regarding the travel and quarantine restrictions. However, the fact that any deposition of a
 4 witness residing in China requires the deponent to travel outside of mainland China in order to
 5 attend the deposition changes the calculation, and the concerns that animated the courts' decisions
 6 to allow remote depositions in *Aileron* and to grant a continuance in *Berglund* remain active here.
 7 *See Aileron*, 2022 WL 93573 at *2 ("The sudden rise of the Omicron variant, coupled with ALC's
 8 corporate representative's unique familial situation, constitutes good cause for a protective order as
 9 to the deposition of ALC's corporate representative"); *see also Berglund*, 2021 WL 1589548, at *2
 10 (granting continuance of trial due to "the risk of contracting COVID-19" for trial-related travel).

11 Irico has acted in good faith during this entire process. Any suggestion by Plaintiffs that
 12 Irico has intentionally delayed these depositions is dispelled by the uncontested facts detailed
 13 above and the unfortunate realities of the Covid pandemic. From the beginning, Irico has focused
 14 on creating a workable process for these depositions to occur, even when Plaintiffs were insisting
 15 on an unworkable approach of holding the depositions in San Francisco. *See* Werbel Decl., Ex. 2 at
 16 1-2 (explaining why Plaintiffs' proposal for depositions in San Francisco was unworkable and
 17 encouraging remote depositions in Hong Kong). When Irico proposed holding remote depositions
 18 in Hong Kong, it could hardly have anticipated the dramatic changes with the pandemic in China
 19 and Hong Kong that occurred over the next several months and the follow-on effects on the
 20 scheduling of the remote depositions.

21 Plaintiffs also mischaracterize the current situation as Irico's "refus[al] to produce
 22 witnesses who have visas and are under Court order to appear." *See* Werbel Decl., Ex. 11 at 2.
 23 Irico is more than willing to produce the witnesses – it is the witnesses themselves who are
 24 refusing to appear. *See* Zhang Decl. ¶¶ 8-9. Irico had secured the cooperation of the witnesses
 25 throughout the deposition process until it came time for the witnesses to agree to a date to travel to
 26 Macau, including during the cumbersome process of applying for and receiving the visas necessary
 27 to travel to Macau for the depositions. *See id.* ¶ 5. When the witnesses refused to travel due to
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1 concerns about the pandemic and subsequent quarantine requirements, Irico offered the witnesses
 2 job support and additional compensation for their time and inconvenience in an effort to secure
 3 their participation but was unsuccessful in persuading the witnesses to agree to travel to Macau.
 4 *See id.* ¶ 10. To this day, Irico hopes to and intends to produce these witnesses for depositions and
 5 seeks an extension to allow for these depositions to occur.⁷ These are hardly the actions of a party
 6 who is refusing to produce a witness.

7 Neither DPPs nor IPPs are prejudiced by Irico's proposed extension. As to the DPP matter,
 8 there is no set schedule beyond fact discovery so there would be no delay or prejudice to DPPs. As
 9 to the IPPs, the schedule proposed by Irico does not extend the recent trial date set by the Court.
 10 Irico's proposed changes to the pre-trial motion schedule in the IPP action largely track the timing
 11 as set by the Court in its prior scheduling orders. *Compare* Proposed Order with Scheduling Order
 12 and Referral to Magistrate Judge for Settlement, ECF No. 5925, and Stipulation and Order re: Case
 13 Schedule, ECF No. 6016. By moving the deposition deadlines and deadlines for dispositive
 14 motions and motions in limine, Irico's proposal allows the parties and the Court to avail
 15 themselves of all potentially relevant evidence by allowing depositions to proceed before the
 16 motions. If the depositions are continued but motions dates not extended, a scenario could exist in
 17 the schedule whereby the parties file dispositive motions, the Court rules on those motions, and
 18 only after those rulings are additional facts developed at deposition that bear on those issues. Re-
 19 aligning the sequencing of the pre-trial motions brings the IPP schedule back into symmetry and
 20 alleviates that potential risk, giving the parties and the Court an orderly path to trial without further
 21 delay.

22 **CONCLUSION**

23 For the foregoing reasons, Irico respectfully requests that the Court grant Irico's Motion.

24 Dated: June 30, 2022

Respectfully submitted,

25 /s/ John M. Taladay

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 27 ⁷ Irico sees encouraging signs in the reduction of the minimum quarantine period from four weeks
 28 to three weeks that was implemented by authorities in Shaanxi Province just this week. *See* Zhang
 Decl. ¶¶ 8-9.

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